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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

STEVEN CHARLES AGUILAR,

Defendant and Appellant.

F077263

(Super. Ct. No. 18CM0011)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Kings County. Robert S. Burns, Judge.

Carol Foster, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, and Christina Hitomi Simpson, Deputy Attorney General, for Plaintiff and Respondent.

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\* Before Levy, Acting P.J., Smith, J. and Snauffer, J.

Appellant Steven Charles Aguilar pled guilty to evading a peace officer (Veh. Code, § 2800.2/count 3) and admitted allegations that he had a prior conviction within the meaning of the “Three Strikes” law (Pen. Code, § 667, subds. (b)-(i)).<sup>1</sup>

On June 26, 2018, Aguilar’s appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, that summarizes the facts, with citations to the record, raises no issues, and asks this court to independently review the record. Aguilar has not responded to this court’s invitation to submit additional briefing. However, on November 7, 2018, this court issued a letter to the parties directing them to file a letter brief addressing whether the trial court imposed an unauthorized sentence by its failure to address victim restitution at Aguilar’s sentencing hearing.

In a brief filed on November 27, 2018, Aguilar contends: (1) the court did not impose an unauthorized sentence by its failure to address victim restitution; and (2) even if the court imposed an unauthorized sentence, remand is not required or necessary. We will remand the matter to the trial court for it to issue an order addressing victim restitution. In all other respects, we affirm.

### **FACTUAL AND PROCEDURAL HISTORY**

On December 17, 2017 at approximately 6:08 p.m., a Kings County Sheriff’s Deputy saw Aguilar standing next to a Cadillac Escalade parked at a mini mart in Hanford. The deputy ran the Cadillac’s license plate because it matched the description of one that had been reported stolen. After dispatch confirmed the Cadillac was stolen, the deputy saw Aguilar get in the Cadillac and drive into a residential neighborhood where the posted speed limit was 25 miles per hour. The deputy then made a U-turn and began following him. The deputy rounded a corner and saw that Aguilar had accelerated to a speed of approximately 60 to 70 miles an hour. He turned on his emergency lights and siren to initiate a traffic stop, but Aguilar continued to accelerate and ran two stop

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<sup>1</sup> All further statutory references are to the Penal Code, unless otherwise indicated.

signs. After Aguilar raised a cloud of dust by driving on a dirt portion of the roadway, the deputy lost sight of him. The deputy continued trying to determine where Aguilar fled and found that he abandoned the Cadillac after crashing into a parked truck. Aguilar was eventually located hiding in an inoperable vehicle and taken into custody. The Cadillac sustained major damage to its front end.

On January 2, 2018, the Kings County District Attorney filed a complaint charging Aguilar with three felonies, unlawfully taking a vehicle (Veh. Code, § 10851, subd. (a)/count 1), receiving a stolen vehicle (§ 496d, subd. (a)/count 2), and evading a peace officer (Veh. Code, § 2800.2/count 3), and five misdemeanors, hit and run driving (Veh. Code, § 20002, subd. (a)/count 4), driving under the influence of a drug (Veh. Code, § 23152, subd. (f)/count 5), being under the influence of a controlled substance (Health & Saf. Code, § 11550, subd. (a)/count 6), driving without a valid license (Veh. Code, § 12500, subd. (a)/count 7), and resisting arrest (§ 148, subd. (a)(1)/count 8). The complaint also alleged that Aguilar had a prior conviction within the meaning of the Three Strikes law (§ 667, subds. (b)-(i)).

On January 16, 2018, Aguilar pled no contest to evading a peace officer and admitted the Three Strikes allegation in exchange for a stipulated, doubled middle prison term of four years and the dismissal of the remaining counts.

On February 14, 2018, the court heard and denied Aguilar's *Marsden*<sup>2</sup> motion.

On February 26, 2018, the court sentenced Aguilar to the stipulated term of four years. The court also awarded Aguilar 113 days of presentence custody credit consisting of 57 days of presentence actual custody credit and 56 days of presentence conduct credit. However, the court did not address the issue of victim restitution.

On March 12, 2018, Aguilar filed a timely appeal. On March 20, 2018, the court granted Aguilar's request for a certificate of probable cause.

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<sup>2</sup> *People v. Marsden* (1972) 2 Cal.3d 118.

## DISCUSSION

### ***Aguilar's Sentence was Unauthorized***

Aguilar contends his evading a police officer offense “legally concluded” when the deputy turned off his emergency lights and siren. Thus, according to Aguilar, the court was not required to order victim restitution and did not impose an unauthorized sentence by its failure to do so because the damage to the Cadillac and truck did not arise from the offense of which he was convicted, and the court did not obtain a *Harvey*<sup>3</sup> waiver when it took his plea. There is no merit to these contentions.

Section 1202.4, subdivision (f), in pertinent part, provides:

“[I]n every case in which a victim has suffered economic loss as a result of the defendant’s conduct, *the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court.* If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court. The court shall order full restitution. ...” (Italics added.)

The stolen Cadillac Aguilar drove suffered major damage when he wrecked it while eluding officers and, presumably, the truck he crashed into was also damaged.<sup>4</sup> Since section 1202.4, subdivision (f) makes victim restitution mandatory when a victim suffers a loss, the court imposed an unauthorized sentence by its failure to issue a restitution order addressing restitution to the owners of the Cadillac and, if indicated, the truck Aguilar crashed into.

“Section 2800.1, subdivision (a) does not require that the pursuing officer continuously activate the emergency lights and siren.” (*People v. Copass* (2009) 180 Cal.App.4th 37, 41 [court found only one pursuit even though pursuing officer turned

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<sup>3</sup> *People v. Harvey* (1979) 25 Cal.3d 754 (*Harvey*).

<sup>4</sup> A review of the record does not provide specific evidence of the amount of damage to either vehicle.

emergency lights off for five minutes during pursuit when officer lost sight of defendant's vehicle].) Since the deputy continued pursuing Aguilar after turning off his emergency lights and siren, Aguilar's evading a peace officer offense continued beyond that point.

In any case, even if Aguilar's evasion offense ended when the deputy turned off his emergency lights and siren, Aguilar would still be responsible for making restitution to the owners of the damaged vehicles because his evasion offense was a cause in fact of the wreck.

“[S]ection 1202.4, subdivision (f)(3) provides that ‘[t]o the extent possible, the restitution order ... shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred *as the result of the defendant's criminal conduct* ....’ (Italics added.) Interpreting the requirement that the damages result from the defendant's criminal conduct, the court in *People v. Jones* (2010) 187 Cal.App.4th 418, 424-427 (*Jones*) held that tort principles of causation apply to victim restitution claims in criminal cases. The court observed that there ‘are two aspects of causation ... : cause in fact (also called direct or actual causation), and proximate cause.’ [Citation.] The court explained that ‘ “[a]n act is a cause in fact if it is a necessary antecedent of an event” ’ and that ‘ “proximate cause ‘is ordinarily concerned, not with the fact of causation, but with the various considerations of policy that limit an actor's responsibility for the consequences of his conduct.’ ” ’ ” (*People v. Holmberg* (2011) 195 Cal.App.4th 1310, 1320-1321.)

“ “The first element of legal cause is *cause in fact* .... The ‘but for’ rule has traditionally been applied to determine cause in fact. ... [¶] The Restatement formula uses the term *substantial factor* ‘to denote the fact that the defendant's conduct has such an effect in producing the harm as to lead reasonable men to regard it as a cause.’ ” ’ [Citation.] [¶] ... California courts have adopted the ‘substantial factor’ test in analyzing proximate cause. [Citation.] ‘ “The substantial factor standard is a relatively broad one, requiring only that the contribution of the individual cause be more than negligible or theoretical.” ’ ” (*People v. Holmberg, supra*, 195 Cal.App.4th at pp. 1321-1322.)

In *Jones*, the defendant pled no contest to driving with 0.08 percent or greater blood-alcohol content and a charge of hit and run was dismissed with a *Harvey* waiver. (*Jones, supra*, 187 Cal.App.4th at p. 420.) At a restitution hearing, the victim of the defendant's offenses sought reimbursement of \$892.79 for the costs of repair to her car's bumper for damages that occurred one day when she attended a court hearing and the bumper caught on a "little steel thing" sticking out of the ground in the parking space she tried to use. (*Id.* at p. 421.) In finding a causal connection between the defendant's driving under the influence offense and the damage to the victim's bumper, the *Jones* court stated:

“[T]here appears to be no question that defendant's driving under the influence was a cause in fact of the damage to [the victim's] bumper, because but for the fact that defendant ran into and damaged [the victim's] camper while driving with in excess of 0.20 percent blood-alcohol concentration, [the victim] would not have been trying to park at the court on the day the bumper of her car was pulled off.”<sup>5</sup> (*Jones, supra*, 187 Cal.App.4th at p. 425.)

Here, even if Aguilar's evasion offense ended when the deputy turned off his emergency lights and siren, the crash that damaged the two vehicles occurred because of Aguilar's criminal conduct in committing that offense. Thus, Aguilar's evading a peace officer offense was a cause in fact of the damage to the two vehicles and he is responsible for making restitution to their owners. Further, since victim restitution is mandatory, the court imposed an unauthorized sentence by its failure to issue a restitution order at Aguilar's sentencing hearing.

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<sup>5</sup> The *Jones* court, however, declined to address the issue of proximate cause because it remanded the matter for another reason and, at that time, the trial court would have the opportunity to address that issue. (*Jones, supra*, 187 Cal.App.4th at p. 427.)

***Remand is Appropriate for the Trial Court  
to Issue a Restitution Order***

Aguilar cites section 1202.46 to contend that even if the trial court failed to address restitution in this case, remand is not required or necessary because this section allows the trial court or either of the parties to raise the issue of victim restitution at any time. We disagree.

Section 1202.46 provides:

“Notwithstanding Section 1170, when the economic losses of a victim cannot be ascertained at the time of sentencing pursuant to subdivision (f) of Section 1202.4, the court shall retain jurisdiction over a person subject to a restitution order for purposes of imposing or modifying restitution until such time as the losses may be determined. This section does not prohibit a victim, the district attorney, or a court on its own motion from requesting correction, at any time, of a sentence when the sentence is invalid due to the omission of a restitution order or fine pursuant to Section 1202.4.”

An invalid or unauthorized sentence is subject to correction whenever it comes to the court’s attention. (*People v. Dotson* (1997) 16 Cal.4th 547, 554, fn. 6.) Further, nothing in section 1202.46 prohibits this court from remanding the matter for the trial court to correct an unauthorized sentence because the court failed to address victim restitution. Therefore, we will remand the matter so the trial court can address this issue.

Further, following an independent review of the record, we find that, with the exception of the restitution issue discussed above, no reasonably arguable factual or legal issues exist.

**DISPOSITION**

The matter is remanded to the trial court for it to issue an order addressing victim restitution. The trial court is directed to issue an amended abstract of judgment that incorporates this order and to forward a certified copy to the appropriate authorities. In all other respects, the judgment is affirmed.